UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1994/4
3 June 1994

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Twelfth session
25-29 July 1994
Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from indigenous peoples' and non-governmental organizations

GE.94-12864 (E)

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1993/46 of 26 August 1993, requested the Secretary-General to transmit the text of the draft United Nations declaration on the rights of indigenous peoples as contained in the report of the Working Group on Indigenous Populations on its eleventh session (E/CN.4/Sub.2/1993/29) to indigenous peoples' and non-governmental organizations for written comments, including a note stating that no further amendments to the draft declaration would be accepted. The Commission on Human Rights endorsed that request in its resolution 1994/29 of 4 March 1994. In accordance with those resolutions, appropriate communications were sent to the relevant organizations.

3. The present document contains replies received as of 1 June 1994 from indigenous peoples' and non-governmental organizations. Further replies, if any, will be included in addenda to the present document.

GRAND COUNCIL OF THE CREES (of Québec)

[Original: English]
[20 May 1994]

1. The Grand Council of the Crees approves the text of the draft declaration of the rights of indigenous peoples as it appears in document E/CN.4/Sub.2/1993/29, and recommends that it be adopted by the Sub-Commission without substantive changes.

2. The Grand Council of the Crees notes that the present text is the product of several years' collaborative effort by the members of the Working Group, Member States, non-governmental organizations, indigenous peoples' organizations, experts and representatives of the intellectual community.

3. The present text is endorsed by our organization on the understanding that it represents a minimum standard for the protection of the human rights of indigenous peoples.

4. The present draft must be read as a whole, noting the interrelationship of its various parts and clauses; and it is specifically noted that any substantive changes which might be made in one part could affect the meaning and effect of the entire document and that our recommendation of the present text is contingent on the present substantive content of the document.

5. Although our organization recommends the present text, this text should not be conceived to represent the position of any indigenous organization, or to represent an indigenous peoples' viewpoint.

6. It should be understood that the text is the product of extensive consultation that entailed, necessarily, considerable compromise on the policies and views of the Grand Council of the Crees.

7. We view the present text as the elaboration of existing rights protected by various international instruments, but requiring additional protection because of severe and persistent violations.

8. We ask States to consider the present text in the light of essential human rights principles, in particular equality of peoples, and the universality and indivisibility of all human rights.

9. We insist on the use of the term "indigenous peoples" to the exclusion of all other terms in making reference to the subjects of this declaration.

10. We note with approval the explanatory note concerning the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1993/26/Add.1) prepared by the Chairman-Rapporteur of the Working Group, Mrs. Erica-Irene Daes.

11. We insist upon the wording in article 3 of the text, and note that the technical review of the United Nations draft declaration on the rights of indigenous peoples prepared by the secretariat (E/CN.4/Sub.2/1994/2) notes that the text of article 3 is "precisely based on article 1, paragraph 1, of the two International Covenants".

12. The failure to fully apply the two International Covenants to the indigenous peoples would be prejudicial, and contrary to the principles of the universality and indivisibility of all human rights.

13. The land provisions of article 7 are crucial for the survival of indigenous peoples, who have been, and continue to be dispossessed of their lands, territories and resources. This comment applies equally to land provisions throughout the draft declaration, in particular to part VI.

14. With regard to the protection of indigenous lands and resources, the principle of "free and informed consent" by the indigenous peoples is paramount.

15. We note with approval the principles applied in article 36 with regard to the recognition and enforcement of treaties concluded between indigenous peoples and States, in particular access to international adjudication of treaty disputes. This has been an area of considerable abuse by States.

16. The Grand Council of the Crees would be pleased to have the present draft declaration approved and promulgated by the General Assembly at the earliest possible opportunity.

17. We recommend that the Working Group proceed as soon as possible to the consideration of a text for a convention on the rights of indigenous peoples.

BLACK HILLS TETON SIOUX NATION

[Original: English]
[20 April 1994]

1. We are particularly concerned with the language contained in article 36 and wish to bring our objections to the attention of the Working Group. We support the language as originally drafted, namely:

> "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies."

2. We cannot accept the additional language contained in the present draft document, namely "agreed to by all parties concerned." Historically, language which has been unclear and open to interpretation has provided the United States with a way to violate our legal treaties. This phrase will completely destroy the positive effect of paragraph 36 and preserve the status quo. Nation States have not had to answer for treaty abuses and violations unless they wanted to. The addition of this language will continue this unjust system and maintain nation-State violations of the sacredness of treaties with the Lakota nation and all indigenous nations.

3. To make ourselves perfectly clear, we support the language of paragraph 36 as originally drafted but will not accept limitations which permit further abuses. The last phrase, "agreed to by all parties concerned", must be removed from the paragraph.

INDIAN COUNCIL OF SOUTH AMERICA

[Original: Spanish]
[6 April 1994]

1. In the fourteenth preambular paragraph, the word "pursue" should be replaced by "adapt".

2. In article 3, the word "pursue" should be replaced by "engage in".

3. At the end of article 4, the words "under whose jurisdiction they live" should be added after the word "State".

4. Article 5 should be amended to read: "Every indigenous individual has the right freely to exercise his nationality."

5. In article 7, subparagraph (b), the words "polluting and/or" should be inserted before "dispossessing". In subparagraph (e) of the same article, the phrase "Any form of propaganda directed against them" should be replaced by "Any form of propaganda directed against the way of life or social, economic and cultural organization of indigenous peoples".

6. In article 10, the words "No relocation shall take place without the free and informed consent ..." should be replaced by the words "No relocation shall take place without first informing and obtaining the free consent ...".

7. In article 12, the phrase "without their free and informed consent" should be replaced by "without their having been informed and without their free consent".

8. In the first paragraph of article 13, after the word "religious traditions" the words "ways of work, social organization" should be added. The paragraph should also end with the words "human remains and cultural artifacts". In addition, in the second paragraph of the same article, the words "indigenous sacred places" should be replaced by "indigenous archaeological and sacred places".

9. In the first paragraph of article 14, the word "scientifically" should be inserted before the words "revitalize, use, develop". In the second paragraph of the same article, after the words "by other appropriate means" the words "through the mass media" should be added.

10. In the first paragraph of article 15, the phrase "control their educational systems and institutions providing education" should be replaced by "control their educational systems and institutions in coordination with the local population to provide education".

11. The second paragraph of article 16 should conclude with the following words: "all segments of society on the basis of reciprocity and complementarity".

12. In article 20, first paragraph, "technical," should be inserted before "legislative".

13. At the end of article 21, the words "a claim or" should be inserted before "just and fair compensation".

14. In article 23, the phrase "develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions" should be replaced by the words "develop all economic and social programmes that are suited to them and administer their programmes through their own institutions, including education, housing and health programmes".

15. In the first paragraph of article 24, the words "including the right to the protection of vital medicinal plants, animals and minerals" should be replaced by the words "including the right to the protection and production of medicinal and nutritional plants, animals and minerals". In the second paragraph of the same article the word "State" should be inserted before "medical institutions".

16. In article 26, the term "sea ice" in the first sentence should be replaced by "cordillera and sea ice".

17. In the final sentence of article 27, the words "resources equal in quality, size and legal status" should be replaced by the words "resources equal in quality, quantity, size and legal status".

18. In the second paragraph of article 28, the words "radioactive, toxic and/or" should be inserted before "hazardous".

19. In paragraph 29 the word "aesthetic" should be inserted after "visual," at the end of the second paragraph.

20. At the end of article 30, the words "and intellectual" should be inserted after "spiritual".

21. In article 32, first paragraph, the word "philosophical" should be inserted before "traditions". In the second paragraph of the same article, the words "social, political, economic, intellectual and cultural" should be inserted before "procedures".

22. In article 38, the words "to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights" should be replaced by "to adapt freely their political, economic, social, cultural, spiritual and intellectual development, for the enjoyment of the rights".

23. In article 39, the words "or others" should be inserted after "States" in the first sentence.